

RESOLUTION NO. 16-134

A RESOLUTION OF THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY OF THE CITY OF KEY WEST (LRA), APPROVING THE USE OF AN OWNER DIRECT PURCHASE PROGRAM TO ELIMINATE SALES TAX FEES ON SELECTED PROJECT MATERIALS FOR CONSTRUCTION OF TRUMAN WATERFRONT PARK PHASE 1A, IN CONFORMANCE WITH TERMS CONTAINED IN THE PROJECT CONTRACT BETWEEN THE CITY AND CHARLEY TOPPINO & SONS, INC.; RATIFYING PURSUANT TO SECTION 2-797(4)(B) OF THE CODE OF ORDINANCES, AN EMERGENCY PROCUREMENT DATED MARCH 11, 2016, IN THE AMOUNT OF \$418,366.00, UNDER THE ODP PROGRAM; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, City staff, in discussion with the contractor for the Truman Waterfront Park Phase 1A, has determined that use of an Owner Direct Purchase program could result in project cost savings in excess of \$200,000.00, by eliminating sales tax costs on selected project materials; and

WHEREAS, pursuant to City Code Section 2-797(4)(b), the City Manager finds that exceptional circumstances exist to exempt a purchase from the competitive bid requirements in the best interests of the City, and recommends ratification of a procurement approved on March 11, 2016 for the Truman Waterfront Project Phase 1A; and

NOW, THEREFORE, BE IT RESOLVED BY THE NAVAL PROPERTIES LOCAL REDEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1: That the use of an Owner Direct Purchase program for selected project materials for construction of Truman Waterfront Park Phase 1A is hereby approved in conformance with the contract between the City and Charley Toppino and Sons, Inc.

Section 2: That the LRA, in accordance with Section 2-797(4)(b) of the Code of Ordinances, hereby ratifies the emergency procurement approved by the City Manager on March 11, 2016 in the amount of \$418,366.00, resulting in initial estimated project savings of \$29,188.00 via the Owner Direct Purchase program.

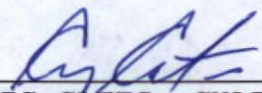
Section 3: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Agency.

Passed and adopted by the Naval Properties Local Redevelopment Authority at a meeting held this 6th day of April, 2016.

Authenticated by the presiding officer and Clerk of the Authority April 7, 2016.

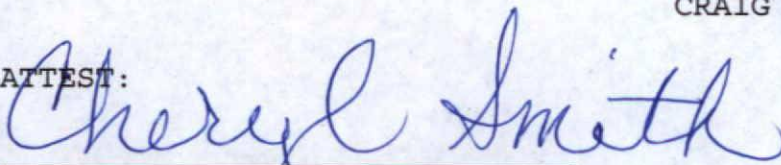
Filed with the Clerk April 7, 2016.

Chairman Craig Cates	<u>Yes</u>
Vice Chair Clayton Lopez	<u>Yes</u>
Commissioner Sam Kaufman	<u>Yes</u>
Commissioner Richard Payne	<u>Yes</u>
Commissioner Margaret Romero	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>



CRAIG CATES, CHAIRMAN

ATTEST:



CHERYL SMITH, CITY CLERK



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

EXECUTIVE SUMMARY

Date: March 16, 2016

To: Jim Scholl, City Manager

From: Kreed Howell, Senior Construction Manager

Cc: Sarah Spurlock, Assistant City Manager
Greg Veliz, Assistant City Manager
Jim Bouquet, P.E., Director of Engineering
Mark Finigan, Director of Finance

Subject: **Approval of Owner Direct Purchase Program for Construction of Truman Waterfront Park Phase 1A.**

Action Statement

Resolution approving the use of Owner Direct Purchase program via Key West Code Section 2-797 (4) Exempt Contractual Services to eliminate sales tax fee on selected materials for Project GR0703 – Truman Waterfront Park Phase 1A. Approve the March 11, 2016 Emergency Procurement of precast stormwater and sanitary sewer structures resulting in an initial estimated project savings of \$29,188 via the Owner Direct Purchase program. Authorize the City Manager to execute Owner Direct Purchase change orders.

Ordinance

Pursuant to the City of Key West Code Ordinances Subpart A, Chapter 2, Article VII, Division 3, Subdivision 2, Sec. 2-797 (4) Exempt Contractual Services b. *if in the opinion of the City Manager exceptional circumstances exist to exempt a purchase from the competitive bid requirements of this subdivision for the best interests of the City, he shall place a resolution before the City Commission for approval of such exemption.*

Background

Resolution No. 15-022 accepted the proposal of Charley Toppino and Sons Inc., (CTS) for construction of the Truman Waterfront Park Phase 1A in the amount of \$17,453,752.67. The project Contract Documents provide, as an option, that the City

Key to the Caribbean – Average yearly temperature 77° F.

MEMORANDUM

of Key West (City) may utilize Owner Direct Purchase (ODP) of materials and services per Contract Specification Section 11000 Summary of Work Sections 1.10 Procedures for the Owner Direct Purchasing Program and 1.11 Changes to Owner Direct Purchase Order (Attachment A). Upon request of the City, CTS provided an initial list of ODP items and associated costs (Attachment B). This initial list consists of precast stormwater and sanitary sewer structures. Based on Attachment B's tentative estimated material cost of \$418,366, the realized sales tax savings is \$29,188. To maintain project schedule and reduce overall project cost, purchase of these initial materials was by Emergency Procurement granted on March 11, 2016 (Attachment C).

CTS has estimated the total ODP material value for Phase 1A Notice to Proceed (NTP) 1 and NTP 2 at \$3,091,868 (Attachment D), resulting in an estimated ODP sales tax savings of \$215,711. Material costs for NTP 3 will be requested once the formal notice to proceed for this subphase is issued by the City.

Purpose and Justification

Approval of the Owner Direct Purchase program eliminates sales tax fees on selected project materials for construction of Truman Waterfront Park Phase 1A by allowing the City, an entity that is exempt from sales tax as per State statute, to purchase certain materials. The ODP program for this project will reduce overall funding required to construct a long-term, state of the art facility to serve the Key West community as a new park.

The improvement of infrastructure is critical to meeting the current and future needs of the City. This project is in accordance with the City of Key West's Strategic Goals #3 *Parks and Recreation areas are accessible to all residents and visitors* and Goal #5 *All of the City's Destinations and Resources Are Accessible to Residents and Visitors*.

Financial Issues

Approval of the requested exempt contractual services via the ODP program initially reduces the project funding requirements by an estimated \$29,188. Implementing this ODP program is anticipated to reduce NTP 1 and NTP 2 funding requirements by an estimated \$215,711. Material costs will be removed from the Contractor's purchase order via deductive change orders, with purchase orders (minus sales taxes) issued directly to the material suppliers by the City. Resulting sales tax savings will be returned to Project GR0703 account #101-4303-543-6300.

Recommendation

Staff recommends approving the use of Owner Direct Purchase program via Key West Code Section 2-797 (4) Exempt Contractual Services to eliminate sales tax fee on selected materials for Project GR0703 – Truman Waterfront Park Phase 1A. Staff also recommends approving the March 11, 2016 Emergency Procurement of precast stormwater and sanitary sewer structures resulting in an initial estimated project savings of \$29,188 via the Owner Direct Purchase program and authorizing the City Manager to execute Owner Direct Purchase change orders.

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Truman Waterfront Park

1.9 SPECIFICATION AND DRAWING CONVENTIONS

- A. Specification Content: The Specifications use certain conventions for the style of language and the intended meaning of certain terms, words, and phrases when used in particular situations. These conventions are as follows:
 - 1. Imperative mood and streamlined language are generally used in the Specifications. The words "shall," "shall be," or "shall comply with," depending on the context, are implied where a colon (:) is used within a sentence or phrase.
 - 2. Specification requirements are to be performed by Contractor unless specifically stated otherwise.
- B. Division 01 General Requirements: Requirements of Sections in Division 01 apply to the Work of all Sections in the Specifications.
- C. Drawing Coordination: Requirements for materials and products identified on Drawings are described in detail in the Specifications. One or more of the following are used on Drawings to identify materials and products:
 - 1. Terminology: Materials and products are identified by the typical generic terms used in the individual Specifications Sections.
 - 2. Abbreviations: Materials and products are identified by abbreviations commonly used and schedules on Drawings.
 - 3. Keynoting: Materials and products are identified by reference keynotes referencing Specification Section numbers found in this Project Manual.

1.10 PROCEDURES FOR THE OWNER DIRECT PURCHASING (ODP) PROGRAM

- A. The City may at its option, institute an Owner Direct Purchasing (ODP) Program for the purchase other materials, which have been bid by the Contractor directly, as a cost saving measure directed at reducing the capital costs associated with construction of the Truman Waterfront Park. The Owner has prepared an ODP procedure, subject to the rules of the Florida Department of Revenue and other agencies having jurisdiction, for the use in this Program, which is presented below.
- B. Step 1: The City shall prepare a Purchase Requisition with the information received from the Contractor and appropriate Subcontractor and their supplier for material(s) or equipment which will be used in the construction of the Truman Waterfront Park Phase 1A. The minimum amount of the Purchase Requisition shall be five thousand U.S. Dollars (\$5,000). The Purchase Requisition shall include, in addition to the payment terms, a description of the material or equipment in the appropriate quantity/quantities, shipping, insurance, and invoice instructions.
- C. Step 2: Upon City approval of the Purchase Requisition, it will develop a Purchase Order for the vendor. The City shall forward a copy of said Purchase Order to the vendor with a required copy to the Contractor. The Contractor is responsible for forwarding a copy of the Purchase Order to the subcontractor with instructions for the subcontractor to contact the vendor and inform vendor that the Purchase Order has been processed and forwarded to the Contractor.

Note: The City shall include its Tax Exempt Number on all Purchase Orders issued as part of the Owner Direct Purchase Program.

8/19/2015

Truman Waterfront Park

- D. Step 3: The vendor shall ship the material or equipment to the project site or other designated location. The Contractor shall submit the original invoice received from the vendor and subcontractor to the City for approval along with a Conditional Release of Lien from the vendor. The City shall review the Purchase Order invoice with the Contractor to confirm delivery and to confirm material(s) and or supplies are not damaged or missing and that the materials and or supplies match the description of those materials and/or supplies included in the Purchase Order. Upon City's approval of the invoice, both parties shall sign the Material Equipment Verification and Confirmation Form for payment. If the Purchase Order invoice is rejected, City shall inform the Contractor, who shall inform the subcontractor and vendor.
- E. Step 4: Upon City's, Contractor's and subcontractor's approval of a Purchase Order, City will submit the Purchase Order invoice for payment. Payments made pursuant to any Purchase Order shall be pursuant to the Florida Prompt Payment Act.
- F. Step 5: At the end of each calendar month, Contractor will calculate the total sum of Purchase Orders issued by the City pursuant to this Owner Direct Purchase Program for the Truman Waterfront Park Phase 1A Project and submit to the City. City shall review this submittal prepare a deductive change order for the material(s)/equipment, including the sales tax saved and submit for review and execution.
- G. Step 6: Upon completion of the Truman Waterfront Park Phase 1A Project, the City will reconcile any differences between the total amount of all Purchase Orders issued pursuant to this Program for the Truman Waterfront Park Phase 1A project and the actual amount paid on said Purchase Orders. The net difference will be adjusted in a Change Order provided to the Owner.

1.11 CHANGES TO AN OWNER DIRECT PURCHASE (ODP) PURCHASE ORDER

- A. If a change is required to an existing Purchase Order, Contractor shall fill out an Owner Direct Purchase Order Change Request Form. Included in said Change Request Form shall be a description of the reason for the change and the appropriate backup information from the vendor shall be attached. The Contractor shall submit the Request for review by the Owner.
- B. Owner, upon receipt and review of a Direct Purchase Order Change Request Form, may issue an amendment to the existing Purchase Order or void the original Purchase Order and issue a new Purchase Order for the increased or decreased amount.
- C. Contractor shall reconcile with City all adjustments to any existing Purchase Orders at the end of each calendar month as required pursuant to Step 5 above.
- D. Additional Comments regarding changes to Owner Direct Purchase:
 - 1. The sales tax savings realized pursuant to the Owner Direct Purchase Program shall be calculated as actual savings incurred through the ODP Program.
 - 2. Contractor shall prepare a Direct Purchase Order Summary Log, which will provide a list of all Purchase Orders issued pursuant to the ODP Program along with the amounts invoiced and paid to date for each Purchase Order. The Summary Log shall also include the amount of sales tax saved on each Purchase Order and shall indicate the number of change orders issued for each Purchase Order. Contractor shall be responsible for constant updates to the Summary Log and shall include a copy of the updated log in its Monthly Progress Report.

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3. Contractor shall prepare a Vendor Direct Purchase Order Log for each vendor that has been issued a Purchase Order pursuant to this Program. The Log shall itemize each invoice submitted to Owner for payment, the amount Owner paid, and any change orders issued to vendor under each Purchase Order. This Log will be updated regularly and transmitted to Owner with each vendor invoice.
4. All original invoices must be mailed directly from the vendor/supplier to:

City of Key West
Attn: Jim Bouquet - Engineering
Post Office Box 1409
Key West, FL 33041
5. All communication with the Owner regarding the Owner Direct Purchase Order Program must be directed to the same address.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 011000

[illegible]



THE CITY OF KEY WEST
Post Office Box 1409 Key West, FL 33041 (305) 809-3883

FORMAL COMPETITIVE PROCUREMENT EXEMPTION

TO: Jim Scholl, City Manager
FROM: Kreed Howell, Senior Construction Manager
DATE: March 11, 2016
RE: Truman Waterfront Park Phase 1A Owner Direct Purchase Materials

ACTION STATEMENT:

Approving a Competitive Bidding Exemption for the emergency procurement of Owner Direct Purchased (ODP) construction materials to support the Truman Waterfront Park Phase 1A Construction Project resulting in an estimated cost savings of \$29,188.

ORDINANCE:

Pursuant to the City of Key West Code Ordinances Subpart A, Chapter 2, Article VII, Division 3, Subdivision 2, Sec. 2-797 (2) Emergency Procurement, the City Manager may make emergency procurement of commodities or contractual services where the cost exceeds \$20,000 when there exists a...substantial loss to the City... All emergency procurements in excess of \$20,000 shall be ratified by the City Commission at the next scheduled City Commission meeting.

BACKGROUND:

Resolution No. 15-326 awarded ITB 15-022 to Charley Toppino and Sons Inc., (CTS) for construction of Truman Waterfront Park Phase 1A in the amount of \$17,453,752.67. The project Contract Documents provide, as an option, that the City of Key West (City) may utilize Owner Direct Purchase (ODP) of materials per Contract Specification Section 11000 Summary of Work Sections 1.10 Procedures for the Owner Direct Purchasing Program and 1.11 Changes to Owner Direct Purchase Order (Attachment A). Upon request of the City, CTS provided a tentative list of initial ODP items and associated costs (Attachment B). Based on Attachment B's

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Purpose and Justification

Approval of the Owner Direct Purchase program eliminates sales tax fee on selected project materials for construction of Truman Waterfront Park Phase 1A. The ODP Program for this project will reduce overall funding required to construct a long-term, state of the art facility to serve the Key West community as a new park.

The improvement of infrastructure is critical to meeting the current and future needs of the City. This project is in accordance with the City of Key West's Strategic Goal #5:


All of the City's Destinations and Resources Are Accessible to Residents and Visitors.

Financial Issues

Approval of the requested emergency procurement via the ODP program initially reduces project GR0703 funding requirements by an estimated \$26,612.05.

Recommendation

Staff recommends approving a Competitive Bidding Exemption for the emergency procurement of Owner Direct Purchased (ODP) construction materials to support the Truman Waterfront Park Phase 1A Construction Project.



Approved by Jim Scholl, City Manager

11 MARCH 2016
Date

Devon Steckly

From: Lewis K. Howell
Sent: Monday, March 14, 2016 5:10 PM
To: Devon Steckly; James Bouquet
Subject: Fwd: ODP total value for Truman

FYI

Kreed Howell
 Senior Construction Manager
 Mobile: 850-890-9354
 Office: 305-809-3963

Misspellings provided by Siri
 Sent from my iPhone

Begin forwarded message:

From: Andi Fraley <andif@toppkw.com>
Date: March 14, 2016 at 5:03:13 PM EDT
To: "Lewis K. Howell" <lhowell@cityofkeywest-fl.gov>
Cc: Andrew Toppino <aitoppino@gmail.com>
Subject: ODP total value for Truman

Hi Kree

please use \$3,091,868.
 for your executive summary/ grand total for Truman
 this amount is with a buffer of 8%-10%, as you suggested
 for materials to be purchased + tax in ODP for the project for
 NTP1 and NTP2

please let us know if you should need anything else-

Kind regards, Andi
Charley Toppino & Sons
 Andi Fraley, AIA and LEED AP
 Sr. Project Manager
 Truman Waterfront Park
CELL: 305 -797-0071
Fax: (305)-296-5189
Main Office: (305)-296-5606

- MATERIALS (MTLS) WITH
 $\text{SALES TAX (ST)} = 3,091,868$
 $\text{SALES TAX RATE} = 7.5\%$
 $\text{SALES TAX AMT} = ?$
- $\text{TOTAL MTL \& ST} = 3,091,868$
 $\text{DIVIDE BY ST RATE + 1 } \div 1.075$
- $\text{TOTAL MTLs} = 2,876,156.28$
 $\text{MULTIPLY BY ST RATE } .075$
 $\text{SALES TAX AMT} = 215,711.72$
- CHECK TOTAL
 MTLS \& ST:
 $\text{MTLS} = 2,876,156.28$
 $\text{ST} = 215,711.72$
 $\rightarrow 3,091,868$

CONTRACT

This Contract, made and entered into this 2ND day of DECEMBER 2015,
by and between the City of Key West, hereinafter called the "Owner", and _____
Charley Toppino & Sons, Inc.

hereinafter called the "Contractor";

WITNESSETH:

The Contractor, in consideration of the sum to be paid him by the Owner and of the covenants and agreements herein contained, hereby agrees at his own proper cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery, and appurtenances for ITB No. 15-022 TRUMAN WATERFRONT PARK PHASE 1A, Key West, Florida to the extent of the Proposal made by the Contractor, dated September 30, 2015 all in full compliance with the Contract Documents referred to herein.

The CONTRACT DOCUMENTS, including the signed copy of the PROPOSAL, CONTRACT FORMS, PERFORMANCE & PAYMENT BONDS AND SCOPE OF WORK.

In consideration of the performance of the work as set forth in these Contract Documents, the Owner agrees to pay to the Contractor the amount bid in the Proposal as adjusted in accordance with the Contract Documents, or as otherwise herein provided, and to make such payments in the manner and at the times provided in the Contract Documents.

The Contractor agrees to complete the work within 910 calendar days as follows:

NTP 1:	365 days
NTP 2:	365 days
NTP 3:	<u>180 days</u>
	910 days

NTP completion days may overlap based on funding and date of respective Notice to Proceed. In the event the City elects not to authorize NTP 3, the contract term shall be reduced accordingly.

The Contractor agrees to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on the said BID.

The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract during the warranty period after the date of final acceptance of the work by the Owner, and further agrees to indemnify and save the Owner harmless from any costs encountered in remedying such defects.

It is agreed that the Contract, based upon the BID, shall be fully complete within the stated number of consecutive calendar days from the date the Notice to Proceed is issued.

In the event the Contractor fails to complete the work within the time limit or extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages for each NTP shall be paid at a rate of \$1,000.00 per day. Sundays and legal holidays shall be included in determining days in default.

This contract will automatically expire upon completion of the project. Contractor's warranty obligations remain in effect.

IN WITNESS WHEREOF, we, the parties hereto, each herewith subscribe the same this

2ND day of DECEMBER, A.D., 2015.

CITY OF KEY WEST

By J. K. Schell

Title CITY MANAGER

CONTRACTOR

By Frank P. J. J. J.

Title President
